

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: COURT ADMINISTRATIVE MATTERS:
Implementation of New Rule 3002.1

No. 11-000015

**CORRECTED ORDER REGARDING APPLICATION OF
RULE 3002.1, FED.R.BANKR.P. TO PENDING BANKRUPTCY CASES¹**

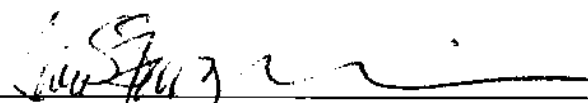
Federal Rule of Bankruptcy Procedure 3002.1 concerning notice relating to claims secured by a security interest in the debtor's principal residence became effective December 1, 2011.¹ Rule 3002.1 governs "all proceedings in bankruptcy cases thereafter commenced, and, insofar as is just and practicable, all proceedings then pending." See Order of April 26, 2011, Fed.R.Bankr.P. Refs & Annos, 11 U.S.C.A., FRBP Refs & Annos. It is impracticable to apply subsections (c) and (f) of Rule 3002.1, Fed.R.Bankr.P. to all cases pending as of December 1, 2011.

WHEREFORE, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure,

IT IS HEREBY ORDERED that subsections (c) and (f) shall apply in bankruptcy cases **pending** in the District of New Mexico on December 1, 2011 as follows:

(c) Notice of Fees, Expenses and Charges. For fees, expenses or charges incurred before December 1, 2011, the holder of the claim shall have 180 days *after* December 1, 2011 within which to file the Notice of Fees, Expenses and Changes.

(f) Notice of Final Cure Payment. This subsection applies to pending cases only if the Debtor completes all payments under the plan on or after December 1, 2011.



JAMES S. STARZYNSKI
Chief United States Bankruptcy Judge



ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Entered on docket: 3/1/12

1. Rule 3002.1 provides:

(a) In General

This rule applies in a chapter 13 case to claims that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan.

¹This Order was corrected to reference Rule 3002.1, Fed.R.Bankr.P. in the title of the Order.

(b) Notice of Payment Changes

The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.

(c) Notice of Fees, Expenses, and Charges

The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

(d) Form and Content

A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).

(e) Determination of Fees, Expenses, or Charges

On motion of the debtor or trustee filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

(f) Notice of Final Cure Payment

Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

(g) Response to Notice of Final Cure Payment

Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

(h) Determination of Final Cure and Payment

On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

(i) Failure to Notify

If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

- (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
- (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.